INDEX

	Page
Interest of the Amici	2
Questions Presented and Statement of Case	6
Argument	6
Each State Has a Legitimate Public Interest in the Advancement of the Secular Education of All of Its Children Including Those Attending Schools Administered by Religious Organizations	6
Conclusion	11
Exhibit A	12
Exhibit B	15

Table of Citations

Cases

Board of Education of Aberdeen-Huntington Local School District v. State Board of Education, 116 Ohio App. 515 (1962) (*app. dism.* 174 Ohio St. 321)	8
Board of Education v. Allen, 392 U. S. 236 (1968)	7, 10, 19
Honohan v. Holt, 17 Ohio Misc. 57 (1968)	6
Ohio v. Hershberger, 103 Ohio App. 188 (1955)	7
Protestants and Other Americans United for Separation of Church and State v. United States of America, U. S. District Court for the Southern District of Ohio, Case No. 3303	11
Walz v. Tax Commissioner of the City of New York, 38 L. W. 4347 (1970)	10, 19

Statutes and Rules

United States Constitution:

First Amendment ---------- 11, 17

Ohio Constitution:

Article I, Section 7 ---------- 6

Statutes and Rules:

Federal Elementary and Secondary Education Act of 1965, 20 United States Code, §§82-827 -- 11

Ohio Revised Code §3301.07 ---------- 3, 9

Ohio Revised Code §3301.17 ---------- 3

Ohio Revised Code §3317.06(H) ---------- 4, 5, 12, 16, 17, 18, 19, 21

Ohio Revised Code §3319.90 ---------- 3

Ohio Revised Code §3321.03 ---------- 8

Ohio Revised Code §3321.07 ---------- 8

Ohio Revised Code §3327.01 ---------- 3, 4

Ohio Revised Code §3333.12 ---------- 4

Rules of the United States Supreme Court:

Rule 42(4) ---------- 2, 11

Other Authority:

Ohio Elementary School Standards, 1957, published by State Board of Education ---------- 9

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 89

ALTON J. LEMON, PRISCILLA REARDON, BETTY J. WORRELL, and PENNSYLVANIA STATE EDUCATION ASSOCIATION, PENNSYLVANIA CONFERENCE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, PENNSYLVANIA COUNCIL OF CHURCHES, PENNSYLVANIA JEWISH COMMUNITY RELATIONS CONFERENCE, AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE, AMERICAN CIVIL LIBERTIES UNION OF PENNSYLVANIA, INC.,

Plaintiffs-Appellants,

v.

DAVID H. KURTZMAN, as Superintendent of Public Instruction of the Commonwealth of Pennsylvania, GRACE SLOAN, as State Treasurer of the Commonwealth of Pennsylvania, ST. ANTHONY'S ROMAN CATHOLIC CHURCH SCHOOL, ARCHBISHOP WOODS GIRLS HIGH SCHOOL, UKRAINIAN CATHOLIC SCHOOL, GERMANTOWN LUTHERAN ACADEMY, AKIBA HEBREW ACADEMY, PHILADELPHIA MONTGOMERY CHRISTIAN ACADEMY, and BETH JACOBS SCHOOLS OF PHILADELPHIA,

Defendants-Appellees,

and

PENNSYLVANIA ASSOCIATION OF INDEPENDENT SCHOOLS,

Intervenor Defendant-Appellee.

APPEAL FROM A DISTRICT COURT OF THREE JUDGES FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BRIEF FOR AMICUS CURIAE

INTEREST OF THE AMICI

This brief is submitted pursuant to Rule 42(4) of the Rules of the United States Supreme Court on behalf of the Attorney General of the State of Ohio and on behalf of the Cleveland, Ohio Public School District, the Cincinnati, Ohio Public School District, and the Youngstown, Ohio Public School District.

The State of Ohio and the public school districts joined herein are interested in the outcome of the instant case because approximately 360,000 young citizens in Ohio are receiving their secular education in state-accredited nonpublic elementary and secondary schools.

The State of Ohio has demonstrated its interest in the quality of the education of *all of its young citizens* by adopting several statutes providing secular educational assistance to nonpublic as well as public school pupils. Amici are interested in the outcome of the instant case because of its potential impact upon the continued implementation of this Ohio legislation.

Some of the accredited, nonpublic schools in Ohio are administered by private organizations without religious affiliation. Others are administered by, or directly or indirectly affiliated with, the Catholic, Lutheran, Christian Reformed, Seventh-Day Adventist, Jewish, Baptist, Episcopal, or Quaker Churches.

There are 844 accredited, nonpublic schools in the State of Ohio, including 93 in the Cleveland School Dis-

trict, 20 in the Youngstown School District, and 70 in the Cincinnati School District.

The approximately 360,000 nonpublic school pupils in Ohio include 37,478 enrolled in nonpublic schools in the Cleveland School District, 29,171 enrolled in nonpublic schools in the Cincinnati School District, and 11,515 enrolled in nonpublic schools in the Youngstown School District.

There are 30,931 pupils eligible for aid to dependent children in the Cleveland School District, and 29 nonpublic schools located in poverty areas (Title I, ESEA, target areas) in that school district. There are 13,628 pupils eligible for aid to dependent children in the Cincinnati School District, and 15 nonpublic schools located in poverty areas in that school district. There are 2,993 pupils eligible for aid to dependent children in the Youngstown School District, and 10 nonpublic schools located in poverty areas in that district.

In order for its students to qualify for benefits under §3327.01, Ohio Revised Code, a nonpublic school in Ohio may not, in the selection of pupils or teachers, practice discrimination against any person on the grounds of race, color, religion, or national origin.

Legislation adopted by the Ohio General Assembly to enhance the health and secular education of children in accredited, nonpublic schools includes:

Ohio Revised Code §3301.17	Provides driver education training to nonpublic, high school children.
Ohio Revised Code §3319.90	Requires public school districts to provide vocational education training to nonpublic, high school children.

Ohio Revised Code §3317.06(H)	Provides secular educational services and secular educational materials to nonpublic school pupils and partial payment of salaries of lay teachers teaching state required, secular subjects at nonpublic schools.
Ohio Revised Code §3327.01	Provides school bus transportation to children attending accredited, nonpublic schools

In addition to the above, the Ohio General Assembly has demonstrated its interest in the quality secular education of citizens attending institutions of higher education by providing secular instruction grants to college students attending the 45 private colleges in the State of Ohio (Ohio Revised Code §3333.12).

The Ohio legislation most comparable to the Pennsylvania statute being considered in this case is Ohio Revised Code §3317.06(H). The pertinent portion of that statute is attached hereto as "Exhibit A." The health and secular educational services provided under that statute are as follows:

(a) Guidance testing and counseling programs
(b) Programs for the deaf, blind, emotionally disturbed, crippled, and physically handicapped children
(c) Audio visual aids
(d) Speech and hearing services
(e) Remedial reading programs
(f) Educational television services

(g) Programs for the improvement of the educational and cultural status of disadvantaged pupils

(h) Partial payment of salaries for lay teachers teaching state-required, secular subjects at nonpublic schools

This legislation, like the Pennsylvania legislation, provides safeguards to insure that assistance provided thereunder is limited to secular courses required to be taught in the accredited, nonpublic schools.

Appropriations made by the Ohio General Assembly for implementation of Ohio Revised Code §3317.06(H) during the 1969-70 and 1970-71 fiscal years amounted to $35,774,400.00. Total payments made to the Cleveland School District for implementation of this nonpublic school legislation during the 1969-70 fiscal year amounted to $1,871,399.43. Payments to the Youngstown School District amounted to $573,449.11, and payments to the Cincinnati School District amounted to $1,450,012.00. Approximately the same amounts will be paid to these school districts for implementation of this legislation during the next school year.

This brief is submitted to demonstrate that in adopting the statutes described herein, the legislative bodies in the States of Pennsylvania and Ohio were exercising valid powers of a state to provide secular educational benefits to all of its young citizens.

QUESTIONS PRESENTED AND STATEMENT OF CASE

Amici adopt the Statement of Case and Questions Presented contained in the brief of defendants-appellees.

ARGUMENT

Each State Has a Legitimate Public Interest in the Advancement of the Secular Education of All of Its Children Including Those Attending Schools Administered by Religious Organizations

The Pennsylvania legislation challenged in this case as well as similar legislation adopted in the State of Ohio and other states, was adopted to enhance the secular education of children.

A well-educated child will help meet the future needs of states and the nation regardless of whether he receives his education in a public school or in a state-accredited, nonpublic school.

Article I, §7, of the *Constitution of Ohio* specifically states that knowledge is "essential to good government" and declares it to be the *duty* of the General Assembly to pass laws to "encourage schools and the means of instruction." Judge Leach in his decision in *Honohan v. Holt*, 17 Ohio Misc. 57 (1968), stated:

> ". . . It also is asserted in effect that the Ohio constitutional provisions are 'more restrictive' than the provision of the First Amendment. With this assertion we do not agree. We think it clear that the reference in paragraph 2 of Article I, Section 7 to the encouragement of 'schools and the means of instruction,' immediately following references to religious denominations, *makes it clear that the word 'schools'*

contained in this constitutional provision is not limited to publicly owned and operated schools."

[17 Ohio Misc. 66-67, emphasis added]

Of necessity, there are many essential and beneficial relationships between each state and voluntary organizations in the state fulfilling public functions. As stated by this Court in *Board of Education v. Allen*, 392 U. S. 236 (1968):

"... These cases were a sensible corollary of Pierce v. Society of Sisters: if the State must satisfy its interest in secular education through the instrument of private schools, it has a proper interest in the manner in which those schools perform their secular function. . . ." [392 U. S. 247]

Ohio courts have clearly recognized the proper interest of the State of Ohio in secular education at nonpublic schools. In *Ohio v. Hershberger*, 103 Ohio App. 188 (1955), the court described this legitimate state interest as follows:

"The statutes of Ohio do not require that every child attend public school, but do require that every child, with certain limited exceptions, attend some recognized school, public, private, or parochial. The purpose of the compulsory education law is to require the proper education of every child. *If a child is sent to a private school such school must provide instruction equivalent to the free instruction furnished in the public schools.* The state has an interest in the children residing therein and requires that such children be not denied an opportunity to receive the educational advantages furnished by the public schools."

[103 Ohio App. 191-192, emphasis added]

In *Board of Education of Aberdeen-Huntington Local School District v. State Board of Education*, 116 Ohio App. 515 (1962) (*app. dism.* 174 Ohio St. 321), the court described legislative control over the secular education of pupils in nonpublic schools as follows:

> *"This brief resume can lead to but one conclusion—that the control of schools, be they public or private providing elementary and secondary education for the youth of Ohio, reposes in the Legislature of our state. . . ."*
>
> [22 Ohio Op. 2d 395; emphasis added]

Ohio has a compulsory education law for all children ages six through eighteen. Section 3321.03, Ohio Revised Code, provides in pertinent part as follows:

> "§3321.03, Compulsory school attendance.
> "Except as provided in this section, the parent, guardian or other person having the care of a child of compulsory school age which child has not been determined to be incapable of profiting substantially by further instruction shall cause such child to attend a school *which conforms to the minimum standards prescribed by the state board of education* for the full time the school attended is in session, or shall otherwise cause him to be instructed in accordance *state. . . ."*

Section 3321.07, Ohio Revised Code, requires that nonpublic schools in Ohio conform to minimum standards prescribed by the State Board of Education. The pertinent portion of that statute reads:

> "§3321.07, Requirements for child not attending public schools.
> "If any child attends upon instruction elsewhere than in a public school such instruction *shall be in a school which conforms to the minimum standards*

prescribed by the state board of education. The hours and term of attendance exacted shall be equivalent to the hours and terms of attendance required of children in the public schools of the district. . . ."
[Emphasis added]

Guidance to the Ohio State Board of Education in the matter of formulation of minimum standards for elementary and high schools is provided by §3301.07, Ohio Revised Code, the pertinent portion of which reads:

> "In the formulation and administration of such standards for non-tax supported schools the board shall also consider the particular needs, methods and objectives of said schools, *provided they do not conflict with the provisions of a general education of a high quality* and provided that regular procedures shall be followed for promotion from grade to grade of pupils who have met the educational requirements prescribed."
> [Emphasis added]

Pursuant to the foregoing statutory provisions, the State Board of Education in Ohio has adopted minimum standards regulating such matters in nonpublic schools as philosophy and objectives, organization, administrative policies, records and reports, the education program, teachers, supervisors, principals and administrators, in-service education, instruction, guidance, citizenship, instructional materials, libraries, the school building and grounds, and custodial service. (See *Ohio Elementary School Standards,* 1957, published by State Board of Education.)

In view of the many cooperative relationships that have existed historically between states and church-related social agencies and in view of the advancement of public welfare flowing from such relationships, we fail to see how appellants can expect this Court to con-

demn as "improper entanglement" state regulations which insure high-quality, secular education in nonpublic schools or state regulations which insure that state secular educational assistance is channeled pursuant to legislative intent.

Ohio courts, relying on *Allen* and later *Walz*, have approved regulatory relationships between state and church-related, nonpublic schools when there is no advancement of the religious function of those schools.

The Court of Appeals of Franklin County, Ohio, on July 28, 1970, rendered its decision in a case challenging the constitutionality of a portion of §3317.06(H), Ohio Revised Code. The Court sustained the constitutionality of this legislation and resolved the questions presented to it on the basis of the decisions of this Court in *Board of Education v. Allen*, 392 U.S. 236 (1968), and *Walz v. Tax Commissioner of the City of New York*, 38 L.W. 4347 (1970).

The Court of Appeals recognized the necessity of involvements between state and nonpublic schools to insure high-quality, secular education and properly interpreted the *Walz* case when it held that involvements between state and the nonpublic schools were improper only if the involvement was with the religious or devotional activities of the nonpublic schools. At page 9 of its opinion, the Court which had before it a record of extensive trial testimony stated:

> ". . . From the evidence submitted, and the words of the statute itself it appears that *there is no involvement by the State of Ohio with the non-secular educational or devotional activities* of the various nonpublic schools. . . ." [Emphasis added]

A copy of this recent decision of the Franklin County Court of Appeals is attached to this brief as "Exhibit B."

The United States District Court for the Southern District of Ohio recently had occasion to consider a challenge to the constitutionality of the Federal Elementary and Secondary Education Act of 1965. (20 United States Code, §§82-827) In *Protestants and Other Americans United for Separation of Church and State v. United States of America*, Case No. 3303, the Court sustained a motion for summary judgment and declared this federal legislation to be constitutional and not violative of the Establishment or Free Exercise Clauses of the First Amendment of the *United States Constitution*. At page 8 of its memorandum opinion and order, Judge Weinman found:

> "The primary effect of the Act is to promote a valid secular goal of enhancing the educational opportunities of the nation's youth."

CONCLUSION

The Constitution of the State of Ohio declares and the Ohio General Assembly and Ohio courts have confirmed that knowledge is indeed essential to good government and to an advanced and orderly society. An educated youth is perhaps a state's greatest natural resource. Surely then, a state must have a legitimate public interest in the advancement of secular education of all of its children.

The decision of the three-judge Pennsylvania District Court should be affirmed.

Respectfully submitted,

PAUL W. BROWN,
Attorney General of Ohio

CHARLES S. LOPEMAN,
First Assistant
Attorney General of Ohio

EXHIBIT A

"§3317.06 *Distribution of payments for educational programs and special circumstances; auxiliary services.*

"In addition to the moneys paid to eligible school districts pursuant to section 3317.02 of the Revised Code there shall be distributed monthly, quarterly, or annually as may be determined by the state board of education moneys appropriated for Chapter 3317. of the Revised Code for the following education programs:

* * * *

"(H) An amount to each school district as approved by the state department of education, to provide services and materials to pupils attending nonpublic schools within the school district for: guidance, testing, and counseling programs; programs for the deaf, blind, emotionally disturbed, crippled, and physically handicapped children; audio visual aids; speech and hearing services; remedial reading programs; educational television services; programs for the improvement of the educational and cultural status of disadvantaged pupils, approved pursuant to division (F) of this section; and for programs for the enhancement of instruction in secular courses required to be taught in nonpublic schools by minimum standards adopted by the state board of education pursuant to section 3301.07 of the Revised Code. Such programs of enhancement of secular instruction are to be accomplished by supplementary educational service contracts between the school district and lay teachers who teach one or more such required secular courses, who are employed by nonpublic schools complying with state board of education minimum standards, who, no later than July 1, 1970 hold valid certificates meeting qualifications required for certificates valid for teaching in the public schools issued by the state board of education certifying qualification to instruct pupils in one or more such required secular courses, and who may

written application for such educational service contract salary supplementation. Such contracts shall be entered into on the basis of guidelines adopted by the state department of education. Such guidelines shall provide equitable salary supplementation for lay teachers based upon the percentage of full-time service each such lay teacher devotes to instruction in secular subjects. Such services, instructional materials, or programs provided for pupils attending nonpublic schools shall not exceed in cost or quality such services, instructional materials, and programs as provided for pupils in the public schools of the district. Textbooks and other instructional material used in secular courses by nonpublic teachers receiving salary supplementation from public funds shall be nonsectarian in nature.

To determine whether the services, materials, and programs provided for the benefit of nonpublic school pupils pursuant to this division achieve the purposes of encouraging and enhancing the means of secular instruction and of promoting the continued availability of high quality general education in nonpublic schools, the superintendent of public instruction shall periodically review courses of study, programs of student and teacher evaluation, and pupil achievement tests utilized in nonpublic schools. Each nonpublic school shall establish a satisfactory program of evaluation which measures pupil achievement in required secular courses taught by teachers who are receiving educational service contract salary supplements under this division.

No school district shall provide services, materials, or programs for use in sectarian religious courses or devotional exercises. No educational materials provided shall be used in, especially suitable for use in, or selected for use in sectarian religious courses or devotional exercises.

Educational services, materials, and programs provided for the benefit of nonpublic school pupils under this division shall be provided without distinc-

tion as to the race, color, or creed of such pupils of their teachers. No services, materials, or programs shall be provided for pupils in nonpublic schools unless such services, materials, or programs are available for pupils in the public schools of the school district.

The state department of education shall adopt guidelines and procedures under which such programs and services shall be provided. Nothing in this division shall be construed as entitling nonpublic school teachers who enter into supplementary educational service contracts to participation in the state teachers retirement system provided for in Chapter 3307. of the Revised Code, to the benefits of public school teachers that arise from entry into contracts with school districts pursuant to section 3319.08 of the Revised Code, to workmen's compensation benefits pursuant to Chapter 4123. of the Revised Code, to sick leave benefits pursuant to section 143.29 of the Revised Code, or as causing such nonpublic school teachers to be included in the definition of 'teacher' as defined in division (A) of section 3319.09 of the Revised Code."

EXHIBIT B

IN THE COURT OF APPEALS OF FRANKLIN COUNTY, OHIO

No. 9734

OTESTANTS AND OTHER AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE et al.,

Plaintiffs-Appellants,

v.

ARTIN W. ESSEX, SUPERINTENDENT OF PUBLIC INSTRUCTION, STATE OF OHIO et al.,

Defendants-Appellees,

DR. ISRAEL RUBIN et al.,

Intervening-Defendants-Appellees.

DECISION

Rendered on July 28, 1970

MR. PHILIP R. BRADLEY,
1620 East Broad Street,
Columbus, Ohio,
and

MR. WILLARD DOBBS,
40 South Third Street,
Columbus, Ohio,
For Plaintiffs-Appellants.

MR. PAUL W. BROWN, Attorney General,

MR. CHARLES S. LOPEMAN, Chief Counsel,

MR. JAMES THARP, Assistant,
Statehouse Annex,
Columbus, Ohio,
For Defendants-Appellees.

DUNBAR, KIENZLE & MURPHEY,

MR. DAVID J. YOUNG, of Counsel,
50 West Gay Street,
Columbus, Ohio,
For Intervening-Defendants-Appellees.

STERN, J.

This case involves the constitutionality of R.C. 3317.0
(H) (133 Ohio Laws H 535, effective August 18, 1969)

The Franklin County Common Pleas Court held i
effect that the statute under consideration is a valid legs
lative enactment and is not in violation of the Ohio o
the United States Constitutions. The judgment entr
(filed January 23, 1970) is based upon a written decisio
made by the trial judge.

Appellants filed their notice of appeal on questions o
law from the judgment and final order dated January 2
1970.

An appeal on questions of law constitutes a review o
the trial by an appellate court, to determine whethe
prejudicial error intervened in the proceedings or tria
Skeel's Appellate Law, Text 11.27, page 116. R.C. 2505.0
defines an appeal on questions of law as a review of
cause upon legal questions including the weight an
sufficiency of the evidence. Under the provisions of R.C
2503.27, upon an appeal on questions of law the judgmen
of the trial court can only be reversed, vacated or mod
fied for *errors appearing on the record.*

In *Trickey* v. *Trickey* (1952), 158 Ohio St. 914, th
Supreme Court ruled that in an appeal on questions o

law the Court of Appeals cannot substitute its judgment for the judgment of the trial court. See also *In Re Tilton* (1954), 161 Ohio St. 571, syllabus 4.

In order to hold the statute under consideration offensive to the state or federal constitutions this court must determine that the invalidity of the law is upon its face apparent, or that there is no evidence to support the trial court's judgment.

Appellants contend that the services, materials, and programs made available by the State of Ohio to nonpublic school pupils under the authority of R.C. 3317.06 (4) is a violation of the First Amendment to the federal constitution, and Article VI, Section 2 of the Ohio Constitution which constitutional provisions in effect prohibit state aid being directly given to parochial schools.

The parties to this cause prior to trial entered into a written stipulation of facts which provided in part:

"2. The State of Ohio has appropriated $15-million for the purpose of implementing R.C. 3317.06(H) (the portion of Amended Substitute Senate Bill 350 challenged herein). To date, $13,754,147.51 of said total appropriation has been expended to provide the following services, materials, and programs pursuant to this Act:

a. Guidance testing and counseling programs.
b. Programs for the deaf, blind, emotionally disturbed, crippled, and physically handicapped children.
c. Audiovisual aids.
d. Speech and hearing services.
e. Remedial reading programs.
f. Educational television services.
g. Programs for the improvement of the educational and cultural status of disadvantaged pupils.

h. Other programs of nonreligious instructi which do not constitute basic classroom i struction.

"* * *

"6. The nonpublic schools referred to in R.C. 3317.0 (H) include state-accredited schools which a either church-related schools, schools whic teach religion, or schools without religious affil ation. The church-related schools or schools which teach religion include Jewish, Catholic Lutheran, and Christian Schools. All of thes schools are state-accredited and comply wit minimum educational standards adopted by th State Board of Education pursuant to Ohio law These schools provide state-accredited instruc tion in all secular courses required to be taugh in public schools. The state minimum educationa standards with which these schools comply re quire adherence to standards regulating teache qualification, number of teachers, maintenanc of records, minimum length of school day, mini mum length of school term, secular course con tent, and required curricula.

"* * *

"8. None of the services, materials, or programs pro vided by local public school districts pursuant t R.C. 3317.06(H) have been provided for use i religious instruction or devotional exercises, and none of said services, materials, or programs pro vided thereunder are used in, especially suitable for use in, or were selected for use in religious in struction or devotional exercises."

The trial court took extensive testimony offered by the parties.

In its written decision the court made certain findings of fact and conclusions of law from the evidence and stipulation:

"* * * that plaintiffs have not shown that the services, materials and programs made available to non-public schools under the Act contributed to the teaching of religion. They have not shown that the Act (sic 3317.06(H) R.C.) results in unconstitutional involvement of the state with religious instruction. They have not shown that the Act is a law respecting the establishment of religion within the meaning of the First Amendment to the Constitution of the United States. We hold that Section 3317.06 H R.C. is not in violation of the United States Constitution."

The issue presented therefore for review is whether e trial court erred as a matter of law in coming to the nclusion which it reached.

Counsel for all parties have carefully and thoroughly viewed all applicable decisions pertinent to the issue. Upon a review of the various citations upon which th sides rely, it appears that the question presented as to be resolved on the two most recent decisions anded down by the Supreme Court of the United States. hey are *Board of Education* v. *Allen* (1968), 392 U.S. 36, 88 S.Ct. 1923; and *Walz* v. *Tax Commissioner of the ity of New York* (1970), 38 L.W. 4347.

Allen held in effect that a state may not support or ssist religious functions in a non-public school that is dministered by a religious organization or when such chools teach religious courses and conducts religious xercises. Public funds may be expended to provide legitmate assistance to pupils when it is intended that such ssistance is to enhance the secular instruction of pupils t non-public schools.

In *Walz*, as in all previous cases, the Supreme Court eviewed the previously decided cases wherein the issue

of the Establishment Clause was considered in detail. T
rationale of Chief Justice Burger's opinion is:

> "The course of constitutional neutrality in this ar
> (sic The Establishment and Free Exercise Claus
> of the First Amendment) cannot be an absolute
> straight line; rigidity could well defeat the bas
> purpose of these provisions, which is to insure th
> no religion be sponsored or favored, none com
> manded, and none inhibited. The general princip
> deducible from the First Amendment and all th
> has been said by the Court is this: that we will n
> tolerate either governmentally established religi
> or governmental interference with religion. * * *
> "Each value judgment under the Religion Claus
> must therefore turn on whether particular acts i
> question are intended to establish or interfere wi
> religious beliefs and practices or have the effect
> doing so. Adherence to the policy of neutrality th
> derives from an accommodation of the Establis
> ment and Free Exercise Clauses has prevented th
> kind of involvement that would tip the balance t
> ward government control of churches or governme
> tal restraint on religious practice.
> "Adherents of particular faiths and individu
> churches frequently take strong positions on publ
> issues including, as this case reveals in the sever
> briefs *amici*, vigorous advocacy of legal or constit
> tional positions. Of course, churches as much as sec
> lar bodies and private citizens have that right. Y
> perfect or absolute separation is really possible; th
> very existence of the Religion Clause is an involv
> ment of sorts—one which seeks to mark boundari
> to avoid excessive entanglement."

Professor Freund, in "Public Aid to Parochi
Schools," 82 Harvard Law Review 1680, said that the
are three policies behind the First Amendment religio

guarantees: i.e., voluntarism, mutual abstention and governmental neutrality. The evidence submitted to the trial court by stipulation and by oral testimony does not indicate that as a matter of law these basic guaranties were violated by the services offered by the state to non-public schools, under the authority of the specific statute under consideration. In none of the recent cases decided by the courts has it been declared that any service or benefit offered by a state to a church-related school is in itself a violation of the First Amendment. The test is whether there is in fact a direct involvement by the state with the church, or by the church with the state which interferes with the free exercise of the respective functions of church and state. The legislature in enacting R.C. 3317.06(H) set forth certain guidelines such as enhancement of instruction in secular courses required to be taught in non-public schools, services to be of benefit to such pupils, prohibiting the use of the services, and materials, etc. for religious courses or devotional exercises etc. recognized the importance of providing such specific services and facilities to all school children, be they public or non-public. Such certain services, materials etc. are to be provided equally to pupils attending all private and public schools that are state-accredited.

In the light of the stipulations and evidence submitted to the trial court, there was sufficient evidence submitted to support the court's conclusion that R.C. 3317.06(H) is a valid legislative enactment, and does not offend the state or federal constitutions. From the evidence submitted, and the words of the statute itself it appears that there is no involvement by the state of Ohio with the non-secular educational or devotional activities of the various non-public schools who have availed themselves

of the services offered by the state to such church related schools. As a matter of law this court cannot substitute its judgment for the trial court's finding.

Appeal dismissed. The judgment of the Common Pleas Court is affirmed.

TROOP, P. J., and HOLMES, J., concur.